the Act provides generally that a bank holding company may engage directly in the business of managing and controlling banks and permissible nonbank activities, and in furnishing services directly to its subsidiaries. Even though section 4 of the Act generally prohibits the acquisition of shares of nonbanking organizations, the Board does not believe that such prohibition should apply to the formation by a holding company of a wholly-owned subsidiary to engage in activities that it could engage in directly. Accordingly, as a general matter, the Board will permit without any regulatory approval a bank holding company to form a wholly-owned subsidiary to perform servicing activities for subsidiaries that the holding company itself could perform directly or through a department or a division under section 4(a)(2) of the Act. The Board believes that permitting this type of subsidiary is not inconsistent with the nonbanking prohibitions of section 4 of the Act, and is consistent with the authority in section 4(c)(1)(C) of the Act, which permits a bank holding company, without regulatory approval, to form a subsidiary to perform services for its *banking* subsidiaries. The Board notes, however, that a servicing subsidiary established by a bank holding company in reliance on this interpretation will be an affiliate of the subsidiary bank of the holding company for the purposes of the lending restrictions of section 23A of the Federal Reserve Act. (12 U.S.C. 371c)

(12 U.S.C. 1843(a)(2) and 1844(b))

[45 FR 54326, July 15, 1980]

§ 225.142 Statement of policy concerning bank holding companies engaging in futures, forward and options contracts on U.S. Government and agency securities and money market instruments.

(a) *Purpose of financial contract positions.* In supervising the activities of bank holding companies, the Board has adopted and continues to follow the principle that bank holding companies should serve as a source of strength for their subsidiary banks. Accordingly, the Board believes that any positions that bank holding companies or their nonbank subsidiaries take in financial contracts should reduce risk exposure, that is, not be speculative.

(b) *Establishment of prudent written policies, appropriate limitations and internal controls and audit programs.* If the parent organization or nonbank subsidiary is taking or intends to take positions in financial contracts, that company's board of directors should approve prudent written policies and establish appropriate limitations to insure that financial contract activities are performed in a safe and sound manner with levels of activity reasonably related to the organization's business needs and capacity to fulfill obligations. In addition, internal controls and internal audit programs to monitor such activity should be established. The board of directors, a duly authorized committee thereof or the internal auditors should review periodically (at least monthly) all financial contract positions to insure conformity with such policies and limits. In order to determine the company's exposure, all open positions should be reviewed and market values determined at least monthly, or more often, depending on volume and magnitude of positions.

(c) *Formulating policies and recording financial contracts.* In formulating its policies and procedures, the parent holding company may consider the interest rate exposure of its nonbank subsidiaries, but not that of its bank subsidiaries. As a matter of policy, the Board believes that any financial contracts executed to reduce the interest rate exposure of a bank affiliate of a holding company should be reflected on the books and records of the bank affiliate (to the extent required by the bank policy statements), rather than on the books and records of the parent company. If a bank has an interest rate exposure that management believes requires hedging with financial contracts, the bank should be the direct beneficiary of any effort to reduce that exposure. The Board also believes that final responsibility for financial contract transactions for the account of each affiliated bank should reside with the management of that bank.

(d) *Accounting.* The joint bank policy statements of March 12, 1980 include accounting guidelines for banks that

engage in financial contract activities. Since the Financial Accounting Standards Board is presently considering accounting standards for contract activities, no specific accounting requirements for financial contracts entered into by parent bank holding companies and nonbank subsidiaries are being mandated at this time. The Board expects to review further developments in this area.

(e) *Board to monitor bank holding company transactions in financial contracts.* The Board intends to monitor closely bank holding company transactions in financial contracts to ensure that any such activity is consistent with maintaining a safe and sound banking system. In any cases where bank holding companies are found to be engaging in speculative practices, the Board is prepared to institute appropriate action under the Financial Institutions Supervisory Act of 1966, as amended.

(f) *Federal Reserve Bank notification.* Bank holding companies should furnish written notification to their District Federal Reserve Bank within 10 days after financial contract activities are begun by the parent or a nonbank subsidiary. Holding companies in which the parent or a nonbank subsidiary currently engage in financial contract activity should furnish notice by March 31, 1983.

(Secs. 5(b) and 8 of the Bank Holding Company Act (12 U.S.C. 1844 and 1847); sec. 8(b) of the Financial Institutions Supervisory Act (12 U.S.C. 1818(b))

[48 FR 7720, Feb. 24, 1983]

§ 225.143 Policy statement on nonvoting equity investments by bank holding companies.

(a) *Introduction.* (1) In recent months, a number of bank holding companies have made substantial equity investments in a bank or bank holding company (the ''acquiree'') located in states other than the home state of the investing company through acquisition of preferred stock or nonvoting common shares of the acquiree. Because of the evident interest in these types of investments and because they raise substantial questions under the Bank Holding Company Act (the ''Act''), the Board believes it is appropriate to provide guidance regarding the consistency of such arrangements with the Act.

(2) This statement sets out the Board's concerns with these investments, the considerations the Board will take into account in determining whether the investments are consistent with the Act, and the general scope of arrangements to be avoided by bank holding companies. The Board recognizes that the complexity of legitimate business arrangements precludes rigid rules designed to cover all situations and that decisions regarding the existence or absence of control in any particular case must take into account the effect of the combination of provisions and covenants in the agreement as a whole and the particular facts and circumstances of each case. Nevertheless, the Board believes that the factors outlined in this statement provide a framework for guiding bank holding companies in complying with the requirements of the Act.

(b) *Statutory and regulatory provisions.* (1) Under section 3(a) of the Act, a bank holding company may not acquire direct or indirect ownership or control of more than 5 per cent of the voting shares of a bank without the Board's prior approval. (12 U.S.C. 1842(a)(3)). In addition, this section of the Act provides that a bank holding company may not, without the Board's prior approval, acquire control of a bank: That is, in the words of the statute, ''for any action to be taken that causes a bank to become a subsidiary of a bank holding company.'' (12 U.S.C. 1842(a)(2)). Under the Act, a bank is a subsidiary of a bank holding company if:

(i) The company directly or indirectly owns, controls, or holds with power to vote 25 per cent or more of the voting shares of the bank;

(ii) The company controls in any manner the election of a majority of the board of directors of the bank; or

(iii) The Board determines, after notice and opportunity for hearing, that the company has the power, directly or indirectly, to exercise a controlling influence over the management or policies of the bank. (12 U.S.C. 1841(d)).

(2) In intrastate situations, the Board may approve bank holding company acquisitions of additional banking subsidiaries. However, where the acquiree